



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 23, 2004

Mr. Miguel A. Saldaña  
Law Office of Miguel A. Saldaña  
3 North Park Plaza  
Brownsville, Texas 78521

OR2004-7191

Dear Mr. Saldaña:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 207870.

The Brownsville Independent School District (the "school district"), which you represent, received a request for various information concerning a certain school district employee. You claim that the requested information is excepted from disclosure under sections 552.101, 552.102, 552.103 and 552.117 of the Government Code.

The school district did not follow the Act's procedural requirements. The school district missed the ten-day deadline for requesting an open records ruling and has failed to submit to this office copies of the information it seeks to withhold or representative samples of the information if the information is voluminous and arguments explaining why the claimed exceptions apply to the requested information. Thus, the information is subject to required public disclosure, as we will explain.

Subsections 552.301(a) and (b) of the Government Code provide:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not

been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

Gov't Code § 552.301(a), (b). In addition, section 552.308 states that when the Act requires a request, notice, or other document to be submitted within a specified period, the requirement is met in a timely fashion if the document is sent to the person by first class United States mail or common or contract carrier properly addressed with postage or handling charges prepaid and it bears a post office cancellation mark or receipt mark of a common or contract carrier indicating a time within that period or the person required to submit or otherwise give the document furnishes satisfactory proof that it was deposited in the mail or common or contract carrier within that period. *See id.* § 552.308(a). It appears from the documents submitted to this office that the school district received the request for information on June 1, 2004. Thus, the ten business day deadline was June 15, 2004. This office received your request on June 22, 2004. You have not informed us of the date the school district mailed the request for an open records ruling. The post office cancellation date on the envelope in which we received your request is illegible. However, the postage on the envelope indicates that the postage was paid in Brownsville, Texas on June 16, 2004. Consequently, we find that the school district has not furnished satisfactory proof that the request was deposited in the mail within the ten business day time period for requesting a decision mandated by section 552.301(a) of the Government Code.

In addition, under section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.302(e). You did not, however, submit to this office copies of the information requested or representative samples and written comments stating the reasons why each exception that you raised would allow the information to be withheld.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to timely seek an open records ruling or submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome

presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). This office has held that a compelling reason exists to withhold requested information when the information is confidential or when the release of the information affects a third party's interests. *See* Open Records Decision Nos. 630 (1994), 150 (1977). Section 552.103, the "litigation exception," protects the interests of a governmental body rather than a third party and does not make information confidential. Thus, the applicability of section 552.103 cannot provide a compelling reason to withhold requested information. *See* Open Records Decision Nos. 677 (2002), 473 (1987). The applicability of sections 552.101, 552.102 and 552.117 can provide a compelling reason to withhold requested information. However, because you have not submitted the information to this office, we have no basis for finding that these exceptions apply. Thus, we have no choice but to order the information released to the requestor. *See id.* § 552.302. We caution that the distribution of confidential information constitutes a criminal offense. *See id.* § 552.352. If you believe the information is confidential and may not lawfully be released, you must challenge the ruling in court as outlined below.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kay Hastings  
Assistant Attorney General  
Open Records Division

KH/seg

Ref: ID# 207870

c: Mr. Tony Conners  
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